EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 13173/07
Andrey Yevgenyevich PONOMAREV
against Russia

The European Court of Human Rights (Third Section), sitting on 26 September 2017 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 February 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andrey Yevgenyevich Ponomarev, is a Russian national, who was born in 1977. He was represented before the Court by Ms A.I. Rastupnyak, a lawyer practising in Moscow.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 6 March 2013 the application was communicated to the Government.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. As established in the domestic proceedings, on 5 March 2006 the applicant and his unidentified accomplice forced Ms T. to follow them to the applicant's flat, subjected her to physical violence and raped her.

6. On 6 March 2006 the applicant was arrested by the police and subsequently detained pending trial.

7. By a judgment of 23 October 2006 the Leninskiy District Court of Ivanovo (*Ленинский районный суд г. Иваново*) convicted the applicant of rape with violence and sentenced him to six years' imprisonment. The conviction was based on a multiplicity of evidence, including statements by the applicant, the victim and witnesses, cross-examinations in the court room, video recordings of investigative measures, forensic examinations and documentary evidence.

8. The victim, Ms T., did not appear in court and her pre-trial statements were read out at the trial. The District Court allowed the pre-trial statements to be read out following a detailed examination of the victim's claims of fear and psychological distress, evidence that the relatives of the accused were seeking to intimidate witnesses, as well as the protective measures put in place by the police. In the opinion of the trial court, those circumstances justified the victim's absence from the trial. The District Court analysed the pre-trial statements read out during the hearing and established that they were coherent and consistent with other evidence. Several defence witnesses were examined during the proceedings.

9. On 16 January 2007 the Ivanovo Regional Court (*Ивановский областной суд*) upheld the judgment on appeal.

COMPLAINTS

10. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that he had been unable to have the victim, Ms T., examined at the trial. He further complained under Article 3 of the Convention of ill-treatment by the police immediately following his arrest and of the inadequacy of the domestic authorities' inquiry into his allegations. In addition, he lodged other complaints under Articles 5, 6 and 13 of the Convention.

THE LAW

11. The applicant's first complaint under Article 6 §§ 1 and 3 (d) of the Convention concerns his inability to have the victim, Ms T., examined at the trial.

12. The Court will examine this complaint having regard to the relevant principles and criteria established previously in the Grand Chamber judgments in the cases of *Al-Khawaja and Tahery v. the United*

Kingdom ([GC], nos. 26766/05 and 22228/06, § 152, ECHR 2011), and *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 118, ECHR 2015).

13. It is clear from the available material that the victim, who had suffered a violent assault, genuinely and consistently informed the authorities of her fear of the applicant, and that the authorities had certain evidence at their disposal that the applicant's relatives had sought to intimidate the witnesses. Those factors were considered by the domestic courts to be sufficient to justify the victim's absence from the trial and the reading out of her pre-trial statements. Nothing in the case file indicates that the Court would have grounds to disagree with their reasoned conclusions.

14. Although the pre-trial statements of the victim clearly constituted a significant piece of evidence, the applicant's conviction was based on the examination of a multiplicity of other evidence, including statements by the applicant, witnesses' cross-examinations in the court room, video recordings of investigative measures, forensic examinations and documentary evidence.

15. As regards the counter-balancing factors aimed at remedying the handicap of the defence, nothing indicates to the Court that the applicant or his defence lawyer were prevented from effectively challenging the evidence presented at trial, including the pre-trial statements of Ms T. Moreover, the domestic courts examined the weight, coherence and consistency of Ms T.'s statements and linked them to other available evidence. Lastly, the defence was able to call several defence witnesses and effectively question them; the testimony of those witnesses was also duly considered by the domestic courts.

16. In the light of the above considerations, the Court concludes that the proceedings as a whole were fair. Accordingly, the relevant complaint under Article 6 §§ 1 and 3 (d) of the Convention concerning the absence of Ms T. from the trial and the applicant's inability to have her examined is manifestly ill-founded. This complaint must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

17. The applicant's second complaint lodged under Article 3 of the Convention concerns his alleged ill-treatment by the police immediately following his arrest and the domestic authorities' inquiry into those allegations. Having regard to all the material in its possession, the Court finds that this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

18. The applicant's further complaints under Articles 5, 6 and 13 of the Convention do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 October 2017.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President